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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE AMERICA, INC., a Delaware
corporation,

Plaintiff,

v.

SERVICE KEY, LLC, a Georgia limited
liability company; ANGELA VINES; DLT
FEDERAL BUSINESS SYSTEMS
CORPORATION, a Delaware corporation; and
DOES 1-50,

Defendant.

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No. 4:12-cv-00790-SBA

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: Jan. 17, 2013
Time: 3:00 p.m.
Place: Courtroom 1, 4th floor (CMC is
telephonic)
Judge: Hon. Sandra B. Armstrong

1 Plaintiff Oracle America, Inc. (“Oracle” or “Plaintiff”); and Defendants Service
2 Key, LLC (“Service Key”), Angela Vines (“Vines”), and DLT Federal Business Systems
3 Corporation (now known as FBSCGov) (“FBSCGov” or “DLT-FBS”), (collectively,
4 “Defendants”) jointly submit this Joint Case Management Conference Statement, pursuant to
5 Civil Local Rule 16-9, and the Standing Order for All Judges of the Northern District of
6 California dated July 1, 2011.

7 The parties previously filed a Joint Case Management Statement on September 6,
8 2012 (D.I. 55) that addressed many of the topics required by the Standing Order for All Judges
9 of the Northern District of California. Rather than repeat that discussion here, below the parties
10 refer the Court to their prior Joint Case Management Statement where applicable.

11 **1. Jurisdiction & Service**

12 The parties refer the Court to the prior Joint Case Management Statement, filed on
13 September 6, 2012 (D.I. 55).

14 **2. Facts and Substance of the Action**

15 **a. Plaintiff Oracle’s Statement**

16 Oracle refers the Court to the prior Joint Case Management Statement, filed on
17 September 6, 2012 (D.I. 55) for a description of Oracle’s factual allegations.

18 Oracle filed its original Complaint on February 17, 2012, and filed its First Amended
19 Complaint on April 19, 2012. Oracle filed its Second Amended Complaint on December 17,
20 2012, which alleges ten claims against the Defendants:

- 21 (1) Copyright Infringement (against all Defendants);
- 22 (2) Violations of the Federal Computer Fraud and Abuse Act (against Service Key and
- 23 DLT-FBS);
- 24 (3) False Advertising Under the Lanham Act Section 43(a) (against all Defendants);
- 25 (4) Breach of Contract (against all Defendants);
- 26 (5) Inducing Breach of Contract (against all Defendants);
- 27 (6) Fraudulent Inducement (against Service Key);
- 28

- 1 (7) Fraudulent Inducement (against DLT-FBS);
 2 (8) Unfair Competition (against all Defendants);
 3 (9) Intentional Interference with Prospective Economic Relations (against all
 4 Defendants); and
 5 (10) An Accounting (against all Defendants).

6 **b. Defendants Service Key and Vines' Statement**

7 The Service Key Defendants refer the Court to the September 6, 2012 Joint Case
 8 Management Statement (D.I. 55) for their factual statement and defenses.
 9

10 **c. Defendant FBSCGov's Statement**

11 FBSCGov refers the Court to the prior Joint Case Management Statement, filed on
 12 September 6, 2012 (D.I. 55) for a description of FBSCGov's factual allegations and defenses.
 13 Given that Oracle's Second Amended Complaint has re-asserted three causes of action that have
 14 already been dismissed by this Court, FBSCGov adds an additional affirmative defense that these
 15 claims fail to state a claim for which relief may be granted, as has already been determined by
 16 this Court.

17 **3. Factual Issues In Dispute**

18 The parties refer the Court to the prior Joint Case Management Statement, filed on
 19 September 6, 2012 (D.I. 55).

20 **4. Legal Issues in Dispute**

21 The parties refer the Court to the prior Joint Case Management Statement, filed on
 22 September 6, 2012 (D.I. 55).

23 **5. Motions**

24 *Pending Motion:* Oracle filed a motion to compel and for sanctions related to DLT-
 25 FBS's failure to produce documents in accordance with the Court's November 28, 2012 Order
 26 (D.I. 88). DLT-FBS filed an emergency motion to withdraw as counsel and to stay proceedings
 27 on January 4, 2013. Oracle filed a motion challenging DLT-FBS's confidentiality designations
 28 under the Protective Order on January 10, 2013.

a. Plaintiff Oracle's Statement Regarding Expected Motions

Discovery Motions: Neither Defendant produced their documents by the Court ordered deadlines (Dec. 28th for Service Key and Dec. 31st for DLT-FBS). Whereas DLT-FBS has offered no date by which it will produce its documents, Service Key promised a full and complete production by January 11, 2013. As noted above, Oracle brought a motion related to DLT-FBS's failure to produce. Oracle is attempting to resolve Service Key's failure to produce documents without involving the Court, and will review Service Key's promised production before deciding whether a motion is necessary.

Summary Judgment Motions: Oracle will evaluate whether to file a motion for summary judgment or partial summary judgment after the parties have substantially completed discovery.

b. Defendants Service Key and Vines' Statement Regarding Expected Motions

Service Key anticipates that it may need to bring a motion to compel relating to its First Set of Requests for Production to Oracle as Oracle has not yet produced any responsive documents.

c. Defendant FBSCGov's Statement Regarding Expected Motions

Motion to Dismiss: Pending the appearance of substitute counsel, given that Oracle's Second Amended Complaint has re-asserted three causes of action that have already been dismissed by this Court, FBSCGov may be filing a Motion to Dismiss portions of the Second Amended Complaint.

Discovery Motions: Pending the appearance of substitute counsel, FBSCGov may be filing a motion for protective order seeking to limit the scope of Oracle's third party discovery. Pending the appearance of substitute counsel, FBSCGov may be filing a motion to compel the production of documents from Oracle given Oracle's failure to produce any of its communications with Rob Muse. In addition, Oracle's statement above that "DLT-FBS has offered no date by which it will produce its documents" is false. FBSCGov has notified Oracle in writing on two separate occasions that, based on the most recent communications with the

1 vendor, the documents were supposed to be delivered to FBSCGov's counsel sometime this
2 week. Due to the pending motion to withdraw and forthcoming substitution of counsel,
3 FBSCGov's current counsel of record is unable to provide an exact production deadline because
4 said counsel will not be compiling the final production from the search results. However,
5 Oracle's attempt to equate this with a refusal to provide any time estimate is disingenuous and
6 misleading.

7 *Summary Judgment Motions:* Pending the appearance of substitute counsel, FBSCGov
8 will evaluate whether to file a motion for summary judgment or partial summary judgment after
9 the parties have substantially completed discovery.

10 **6. Amendment of Pleadings**

11 Oracle filed the operative Second Amended Complaint on December 17, 2012. On that
12 same day Oracle filed a Motion to Seal the Complaint. The Court granted the Motion to Seal in
13 part, and denied it in part. Oracle re-filed the Second Amended Complaint without redactions on
14 December 24, 2012.

15 **a. Plaintiff Oracle's Statement**

16 Neither Defendant responded to the Second Amended Complaint by the due date of
17 January 3rd 2013 (17 days after Oracle filed the Second Amended Complaint pursuant to Fed. R.
18 Civ. P. 15(a)(3) and 6(d)). Oracle has not yet determined whether any further amendment to add
19 parties or claims will be necessary or appropriate. Oracle is informed and believes that there
20 may be additional parties involved in the acts alleged in its complaint, but their identities have
21 been concealed from Oracle. After discovery, which is necessary to identify the names and
22 capacities of these parties, Oracle will evaluate whether it is necessary to amend its complaint to
23 identify them.

24 **b. Defendants Service Key and Vines' Statement**

25 The Service Key Defendants will be filing answers to the Second Amended Complaint on
26 or before the due date of January 10, 2013. The Service Key Defendants do not know whether
27 further amendments to their respective responsive pleadings will be necessary.
28

c. Defendant FBSCGov's Statement

FBSCGov has not yet determined whether any further amendment to add parties or counterclaims will be necessary or appropriate.

7. Evidence Preservation

a. Oracle's Statement

Oracle has implemented an appropriate litigation hold for its custodians and computer servers that are likely to have information that may be relevant to this dispute. Oracle has attempted to discover what steps, if any, Defendants have taken but has so far been unsuccessful. However there has been at least some indication so far that Defendants have not retained potentially relevant documents in violation of their obligations under the Federal Rules of Civil Procedure. Oracle is concerned Defendants failed to preserve relevant evidence given their failure to produce their documents by the Court-ordered deadlines without justification, a concern that is heightened by DLT-FBS's counsel's emergency motion to withdraw without specifying a reason.

b. Defendants Service Key and Vines' Statement

When the Parties discussed evidence preservation during their Rule 16 conference, Service Key told Oracle that evidence preservation should be both in proportion to the scale of the claims at issue, and that it should be mutual. Oracle did not object to these suggestions, nor did it make any suggestions during the Rule 16 conference or subsequently as to what Oracle contended would be an appropriate approach to evidence preservation.

c. Defendant FBSCGov's Statement

FBSCGov has implemented an appropriate litigation hold for its custodians and computer servers that are likely to have information that may be relevant to this dispute and has repeatedly informed Oracle of this fact. Oracle's statement above that it "has attempted to discover what steps, if any, Defendants have taken but has so far been unsuccessful" is false. Oracle has never asked about specific steps; it has only asked whether appropriate steps have been taken, and it has been informed that such steps have been taken.

8. Disclosures

The parties exchanged their initial disclosures under Rule 26(a) on July 13, 2012.

9. Discovery

a. Discovery Taken To Date

In addition to the discovery described in the prior Joint Case Management Statement, filed on September 6, 2012 (D.I. 55), Oracle served notices of deposition for Leo Bebeau, Geoff Prosser, and Michael Johnson on December 24, 2012. Oracle served third-party Subpoenas to Produce Documents to NAPC, Inc., a Service Key partner, and Allen Press, Inc. and Color Edge Visual, LLC, end customers Oracle believes received support from Service Key, on September 21, 2012. Oracle also served third-party Subpoenas to Produce Documents on Service Key partners West Coast Computer Exchange, Securetek Group, Inc., and Centrics IT, LLC on November 15, 2012. Oracle served third-party Subpoenas to Produce Documents on Domains by Proxy on October 4, 2012 and MediaFire on December 7, 2012, as Oracle believes both entities hosted websites or content related to Defendants' unlawful activities. Oracle served a third-party Subpoena to Testify at Deposition to Atlantix Global Systems, LLC pursuant to F.R.C.P. 30(b)(6) and Mike Jacovitch on December 24, 2012. Oracle also served a third-party Subpoena to Testify at Deposition to Rob Muse on January 3, 2013 and a third party Subpoena to Produce Documents on Stratiscom LLC on January 9, 2013.

Service Key served Requests for Production on Oracle on September 20, 2012. DLT-FBS served Requests for Production on Oracle and Service Key on September 25, 2012, and Interrogatories on Oracle on November 27, 2012.

b. Rule 26(f)(3)(A): Initial Disclosures

See Section 8 above.

c. Rule 26(f)(3)(B): The Scope Of Anticipated Discovery And When It Should Be Completed

(1) Oracle's Position

Oracle refers the Court to the prior Joint Case Management Statement, filed on September 6, 2012 (D.I. 55). Due to the delays in obtaining responses to Oracle's foundational

1 discovery requests, described in Oracle's Motion to Compel (D.I. 56 at 2-6), Oracle is concerned
 2 that the previously ordered case schedule may no longer be feasible. Oracle will attempt to
 3 complete discovery in the time allotted, however in the event of further delay, Oracle reserves its
 4 right to seek additional time for discovery.

5 In addition, Oracle may need to take additional depositions than those initially allotted.
 6 Defendants' initial document productions, as well as the productions of third-parties, have
 7 revealed additional witnesses with relevant knowledge of Oracle's allegations. Oracle therefore
 8 reserves its right to seek additional depositions if necessary.

9 (2) Defendants Service Key and Vines' Statement

10 In addition to conducting discovery into the merits of Oracle's claims and their own
 11 defenses, Service Key and Vines anticipate that they will have to engage in discovery to
 12 determine whether Oracle's policies toward independent service providers who compete with
 13 Oracle in the market for hardware support are anti-competitive.

14 (3) Defendant FBSCGov's Statement

15 FBSCGov refers the Court to the prior Joint Case Management Statement, filed on
 16 September 6, 2012 (D.I. 55). FBSCGov opposes Oracle's renewing its prior request for
 17 additional deposition time, which has already been denied by the Court.

18 d. Rule 26(f)(3)(C): Issues About Electronically Stored Information ("ESI")

19 DLT-FBS has represented that it has engaged an electronic discovery vendor and will
 20 produce its ESI with the relevant metadata. Oracle will do the same. Service Key produced its
 21 emails in native form, which also contains relevant metadata. Oracle and Service Key are
 22 currently meeting and conferring on Service Key's additional ESI, and how additional metadata
 23 will be preserved and produced.

24 e. Rule 26(f)(3)(D): Claims Of Privilege Or Protection

25 The parties refer the Court to the prior Joint Case Management Statement, filed on
 26 September 6, 2012 (D.I. 55).
 27
 28

f. Rule 26(f)(3)(E): Changes To Discovery Limits

Interrogatories: The parties refer the Court to the prior Joint Case Management Statement, filed on September 6, 2012 (D.I. 55).

Requests for Production and Requests for Admission: The parties refer the Court to the prior Joint Case Management Statement, filed on September 6, 2012 (D.I. 55).

Depositions: Pursuant to the Court's instruction at the September 13, 2012 Case Management Conference, the presumptive limit stated in Fed. R. Civ. P. 30(a)(2)(A) shall apply, provided that should any party require additional depositions, it may ask the Court for more.

g. Rule 26(f)(3)(F): Any Other Orders Under Rules 26(c), 16(b), or 16(c)

The Court signed the parties' stipulated Protective Order on November 28, 2012 (D.T. 87).

10. Class Actions

This case is not a class action.

11. Related Cases

There are no known related cases.

12. Relief

The parties refer the Court to the prior Joint Case Management Statement, filed on September 6, 2012 (D.I. 55).

13. Settlement and ADR

The parties held a settlement conference with Magistrate Judge Cousins on December 13, 2012. Oracle and Service Key held additional settlement conferences on December 20, 2012 and December 31, 2012. Settlement discussions with Service Key are ongoing.

14. Consent To A Magistrate For All Purposes

The parties refer the Court to the prior Joint Case Management Statement, filed on September 6, 2012 (D.I. 55).

15. Other References

This case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

16. Narrowing of Issues

The parties refer the Court to the prior Joint Case Management Statement, filed on September 6, 2012 (D.I. 55).

17. Expedited Schedule

This case is not suitable for handling under the Expedited Trial Procedure of General Order 64.

18. Scheduling

Pursuant to the Court's September 24, 2012 Order (D.I. 59), this case has been set for the below schedule.

Close of Fact discovery	5/1/2013
Designation of experts	5/1/2013
Designation of Rebuttal Experts	5/22/2013
Expert discovery cut-off	6/26/2013
Dispositive Motion Cut-off	8/20/2013
Pretrial Conference	10/5/2013
Trial	10/14/2013

19. Trial

Pursuant to the Court's September 24, 2012 Order (D.I. 59), trial before a jury will commence on October 14, 2013 for an estimated 8-10 trial days.

20. Disclosure Of Non-Party Interested Entities Or Persons

The parties refer the Court to the prior Joint Case Management Statement, filed on September 6, 2012 (D.I. 55).

1 Dated: January 10, 2013

Bingham McCutchen LLP

2
3 By: /s/ Geoffrey M. Howard
4 Geoffrey M. Howard
5 Attorneys for Plaintiff
Oracle America, Inc.

6 Dated: January 10, 2013

GCA Law Partners LLP

7
8 By: /s/ Valerie M. Wagner
9 Valerie M. Wagner
10 Attorneys for Defendants
Service Key LLC and Angela Vines

11 Dated: January 10, 2013

Dunlap, Grubb & Weaver, PLLC

12
13 By: /s/ David Ludwig
14 David Ludwig
15 Attorneys for Defendant
FBSCGov f/k/a DLT Federal Business
16 Systems Corporation

17
18 Pursuant to Civil Local Rule 5-1(i), I attest that the concurrence in the filing of
19 this document has been obtained from each of the other signatories.
20

21 /s/ Geoffrey M. Howard
22 Geoffrey M. Howard
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